

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANDRE NICHOLS, and DANIEL
MORAES,

Plaintiffs,

- against -

MICHAEL T. MAHONEY, EMC CONTRACTING
INC., EMC NEW YORK CONTRACTING, and
EMC of NEW YORK, INC.,

Defendants.
-----X

ECF Case

Docket No.
08-CV-3306 (CM) (DCF)

**NOTICE OF
CROSS-MOTION**

NOTICE OF CROSS-MOTION TO AMEND THE COMPLAINT

PLEASE TAKE NOTICE that, should the Court find that plaintiffs' complaint does not sufficiently plead the claims against defendants, then upon the Complaint in this action, the attached declaration of Joy K. Mele, dated August 1, 2008, and the exhibit thereto, the accompanying memorandum of law, and upon all prior proceedings had herein, plaintiffs Andre Nichols and Daniel Moraes, will cross-move this Court, before the Honorable Colleen McMahon, U.S.D.J., at the United States Courthouse, 500 Pearl Street, New York, NY, at a date and time to be designated by the Court, or as soon thereafter as counsel can be heard, for an Order, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, for leave to amend the Complaint, and granting such other and further relief as the Courts deems just and proper.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, shall be served in accordance with the rules of the Court.

Dated: August 1, 2008
New York, New York

Respectfully submitted,

O'DWYER & BERNSTIEN, LLP

s/ Gary Silverman

Gary Silverman (GS9287)

Joy K. Mele (JM0207)

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